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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,394	10/21/2003	Salvadore P. Tarantino	AGHTP001	8653
22434	7590	04/30/2007		
BEYER WEAVER LLP P.O. BOX 70250 OAKLAND, CA 94612-0250			EXAMINER ALEXANDER, REGINALD	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 04/30/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/691,394	<b>Applicant(s)</b> TARANTINO ET AL.	
	<b>Examiner</b> Reginald L. Alexander	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 and 41-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/06</u> <del>5/07</del> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of group II, claims 15-40 in the reply filed on 15 February 2007 is acknowledged.

It should be noted that after further review of the restriction, claims 11-14 have been added to the grouping and are herein being examined along with claims 15-40.

### ***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 11-40 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 11-40 of copending Application No. 10/812,571. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-26, 28 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 24, it is not clear how the application station can apply materials from the side of the conveyor and still be applied to the cut sides of the produce product from the top and bottom of the produce product. The same can be said about the arrangement described in claim 33. The claims fail to positively recite a structural arrangement for the application device which would allow for the claimed functional arrangement. It is also not clear in the claims if the produce is cored and topped from the sides of the conveyor or just repositioned within the holders after coring and topping.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – )

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Dandrea.

There is disclosed in Dandrea a product transport system, comprising: a conveyor system 20 including an endless conveyor belt 40, 41 guided over a roller system 42, 43, 44 and being driven by a drive element 31, the belt having a multiplicity of openings (spaces) formed thereon; a plurality of cushioned holders 68; a loading station 21; an unloading station 25; and a plurality of coring stations 76.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dandrea.

Dandrea discloses all of the claimed subject matter except a plurality of conveyor belts. It would have been obvious to one skilled in the art to provide additional conveyor belts, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. The additional belts would allow for an increase in the amount of produce which could be processed.

Claims 15, 16, 18, 21, 22, 27, 29-32, 34, 35, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dandrea in view of Hill.

Dandrea discloses all of the claimed subject matter except for a an application station for applying shelf life extending materials onto the produce being treated.

Hill discloses a produce production system including a means 26, 50 for applying a chlorinated water onto produce being processed in a system, the system including a recycling means for the material, a drying means and a packaging means.

It would have been obvious to one skilled in the art to provide the system of Dandrea with the means for applying chlorinated water taught by Hill, in order to clean the produce before packaging.

It would have been obvious to one skilled in the art to provide the system of Dandrea with the drying means taught in Hill, in order to dry the produce after it has the chlorinated water applied thereto.

It would have been obvious to one skilled in the art to provide the system of Dandrea with the packaging means taught in Hill, in order to prepare the produce for shipping and storage.

Claims 17, 23 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dandrea in view of Hill as applied to claims above, and further in view of Shaw.

Shaw discloses the use of annular produce holding elements 194, 199; and a coring station which includes both a coring and topping element.

It would have been obvious to one skilled in the art to substitute the coring elements of Dandrea, as modified by Hill, with the coring and topping element taught in Shaw, in order to allow for the removal of a top portion of a produce element which might have a stem.

It would have been obvious to one skilled in the art to modify the holders of Dandrea, as modified by Hill, with that taught by Shaw and provide an annular shape, in order to better support produce have a more circular shape.

Claims 19, 20, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dandrea in view of Hill as applied to claims 15 and 29 above, and further in view of Palmason et al.

Palmason teaches that it is known in the art to provide a cleaning station for cleaning a conveyor system.

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It would have been obvious to one skilled in the art to provide the system of Dandrea, as modified by Hill, with the conveyor cleaning station taught in Palmason, in order to remove unwanted residue from the conveyor element.

***Allowable Subject Matter***

Claims 24-26, 28 and 33 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Carlson, Altman, Vidas and Dalmasso et al. are cited for their disclosure of the state of the art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

rla  
13 April 2007

  
Reginald L. Alexander  
Primary Examiner  
Art Unit 1761